IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3521 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARIJAN RAMBHAI DEVATBHAI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner(s) : 1,
Mr. PD Bhate, AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/09/2005

ORAL JUDGMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 25.10.1981 in Revision Application TEN.B.R No. 43/88 in dismissing the said Revision Application

confirming the order passed by the Deputy Collector, Rajula dated 15th October 1998 in Tenancy Appeal No. 4/86 as well as the order passed by the Mamlatdar, Dhari, dated 1st April 1986.

2. The dispute is with regard to land bearing Survey No. 12-Paiki admeasuring 10 acres and 25 gunthas of land situate at Village Zar. The land in question was owned by one Harijan Bhaya Luna, father of respondents No. 2 and 3 and the said land was a restricted land. The said land came to be transferred in favour of the petitioner in the year 1961 and it is the case of the petitioner that the said land was mortgaged with the petitioner on payment of Rs. 4,200 and an Agreement/Banakhat was entered into on the stamp paper of Rs. 1.20 ps. After a period of almost 18 years the respondents No. 2 and 3 approached the Mamlatdar, Dhari for getting the said land back on the ground that the said land was in breach of Section 43 of The Bombay Tenancy and Agricultural Lands Act, 1948 (“the Tenancy Act” for short) and therefore the application was submitted under Section 84 of the Tenancy Act. The Mamlatdar, Dhari, held that the transaction in favour of the petitioner and the original landowner was in breach of Section 43(1) of the Tenancy Act and therefore directed to maintain status-quo ante within a period of 3 months failing which the land in question will be forfeited to the State Government and will be disposed of under Section 84(2) of the Tenancy Act.

Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Dhari dated 1st April 1986 in Tenancy Case No. 10/85, the petitioner preferred Tenancy Appeal No. 4/2004 before the Deputy Collector, Rajula which came to be dismissed by the Deputy Collector, Rajula by order dated 15th October 1988. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Rajula dated 15th October 1988 in Tenancy Appeal No. 4/1986, the petitioner preferred revision application before the Gujarat Revenue Tribunal [“the Tribunal” for short] under Section 76 of the Tenancy Act being Revision Application No. TEN.B.R.43/88 and the same came to be dismissed by the Tribunal by judgment and order dated 25.10.1991. Being aggrieved and dissatisfied with the judgment and order passed by the Tribunal dated 25.10.1981 in Revision Application TEN.B.R. 43/88, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri PV Hathi, learned advocate appearing on behalf of the petitioner has vehemently submitted that initiation of proceedings before the Mamlatdar by the respondents No. 2 and 3 under Section 84 of the Tenancy Act was after an unreasonable period, i.e., after 18 years which was not permissible. He has also further submitted that the land was transferred in favour of the petitioner in the year 1961 on the basis of the agreement to sell/mortgage

deed on the stamp paper of Rs. 1.20 ps. and at the relevant time when the transaction took place and/or the land was transferred by way of aforesaid agreement there was no breach as contemplated under provisions of Section 43 which was in operation at the relevant time and Section 43 of the Act came to be amended in the year 1977 and as per the amendment even property transfer done by way of agreement without prior permission of the competent authority was considered to be in breach of Section 43. It is therefore submitted that the amended provision of Section 43 would not have been made operative retrospectively. He has further submitted that the above submission was made before the Tribunal but on misreading of the document and/or on considering the transaction as “sale” inspite of Deed of Mortgage the Tribunal held that even as per the pre-amended Section 43 the transaction was in breach and in fact when it was the case on behalf of the respondents No. 2 and 3 even before the Mamlatdar that the land in question was mortgaged with the petitioner the transaction in question and the deed could not have been considered as bad in law. Shri Hathi has relied upon the judgment of this Court in the case of Punabhai Dhedubhai Baraiya Vs. Patel Chhaganbhai Parshotamdas & Anr., reported in 24(2) G.L.R. Page 1165 in support of his above submission with regard to retrospective operation of Section 43 of the Tenancy Act. Shri Hathi has also relied upon the judgment of the

Hon'ble Supreme Court in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, reported in (1997) 6 S.C.C. Page 71 with regard to exercise of powers by the Mamlatdar after unreasonable period. It is therefore requested to allow the present Special Civil Application.

4. Shri PD Bhate, learned AGP is not in position to support the action which came to be initiated after the period of 18 years of the original transaction. He has further submitted that as the transaction was found to be in breach of Section 43 of the Tenancy Act and the same was considered to be a “sale” by the Tribunal the judgment and order passed by the Tribunal dismissing the revision application is not required to be interfered with by this Court exercising power under Article 227 of the Constitution of India.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the transaction/transfer had taken place in the year 1961. It was the case on behalf of the respondents No. 2 and 3 before the Mamlatdar, Dhari that the land in question was mortgaged with the petitioner for an amount of Rs. 4,200 and that they wanted to get the land back on payment of Rs. 4200. Under the circumstances, the Gujarat Revenue Tribunal could not have treated and/or considered the transfer as “sale”

when it was the case of the respondents No.2 and 3 that it was done by way of mortgage. Considering the transaction and the Deed of Mortgage, it appears that as per the pre-amended Section 43 of the Tenancy Act which was in operation prior to 1977 the transaction was not in breach of those provisions, as for the first time after amendment in the Tenancy Act the agreements were covered under Section 43(1) and such agreements would also hit by Section 43(1) of the Act. Under the circumstances, the Gujarat Revenue Tribunal has materially erred in holding that the transfer in favour of the petitioner was hit by Section 43. Even otherwise, in view of the fact that proceedings came to be initiated after a period of 18 years of the original transfer which is an unreasonable period, the proceedings were not required to be entertained and/or no orders were required to be passed in proceedings which came to be initiated after such unreasonable period. As held by the Hon'ble Supreme Court in the case of *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim,* ***(supra),*** even suo motu enquiry by the Mamlatdar under Section 84(c) of the Bombay Tenancy and Agricultural Lands Act is required to be initiated within a reasonable time. Under the circumstances, on that ground also the proceedings were required to be declared invalid and the orders impugned are required to be quashed and set aside. It is, however, made clear that by virtue of this order, the respondents No. 2 and 3 are not

debarred and/or restrained from redeeming the mortgage in accordance with law and on merits.

6. For the reasons stated hereinabove, the petition succeeds. The judgment and order passed by the Gujarat Revenue Tribunal dated 25.10.1981 in Revision Application TEN.B.R No. 43/88, the order passed by the Deputy Collector, Rajula dated 15th October, 1988 in Tenancy Appeal No. 4/1986 as well as the order passed by the Mamlatdar, Dhari, dated 1.4.1986 in Tenancy Case No. 10/1985 are hereby quashed and set aside reserving liberty to the respondents No. 2 and 3 to redeem the mortgage. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.